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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,629	04/15/2004	Douglas Seefeldt	Seefeldt, Douglas	1305
23427	7590	12/14/2005	EXAMINER	
KEITH S BERGMAN ATTORNEY AT LAW 7 SOUTH HOWARD STREET SUITE 418 SPOKANE, WA 992013898			LOWE, MICHAEL S	
			ART UNIT	PAPER NUMBER
			3652	

DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/826,629	Applicant(s) SEEFELDT ET AL.	
	Examiner M. Scott Lowe	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2005.
- 2a) ☒ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☒ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 September 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Drawings

The drawings are objected to because the newly submitted figures 10 & 11 are both labeled "Fig. 1" on the drawings sheet. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Furthermore, in order to avoid confusion, the drawing sheets should be numbered (i.e. Sheet 1 of 4, Sheet 2 of 4, etc.).

Specification

The disclosure is objected to because of the following informalities: the newly amended page 20, line 21 states the pine cone is found on figure 1. This should be changed to figures 10 & 11).

Appropriate correction is required.

Claim Objections

Claims 1,3,4,6,7 are objected to because of the following informalities:

Claim 1, line 6 should have the “;” before “and”.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1,6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1 states that the fingers are coplanar. Figure 8 clearly shows the fingers are not coplanar. Claim 6 further states the fingers are angled relative to one another

and therefore cannot be coplanar. The contradictions between the claim limitations render these claims indefinite.

For sake of examination it is assumed that the fingers may or may not be coplanar.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1,6, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 states that the fingers are coplanar. Figure 8 clearly shows the fingers are not coplanar. Claim 6 further states the fingers are angled relative to one another and therefore cannot be coplanar. The contradictions between the claim limitations render these claims indefinite.

For sake of examination it is assumed that the fingers may or may not be coplanar.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,2,6-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Edwards (US 6,619,022).

Re claim 1, Edwards teaches a device usable as a pine cone collecting and holding tool (column 8, line 1) comprising in combination:

an elongate tubular body 10 defining a medial channel and having an upper end portion 12 opening to said medial channel and a lower end portion 11 opening to said medial channel and defining first fastening means (not numbered) ; and

an entry structure 30 having an annular peripheral rim defining an orifice geometrically similar to and larger than the lower end portion of the tubular body to fit over the lower portion 11 of the tubular body,

said peripheral rim:

defining second fastening means (not numbered) to releasably interconnect with the first fastening means of the body for positional maintenance of the peripheral rim on the body 10, and

at least two resiliently deformable triangular-like fingers 41 spacedly carried about the inner surface 39 of the rim in a coplanar relationship to extend radially inwardly spacedly distant from each other to define an orifice between the fingers to allow passage of pine cones therethrough upon deformation of at least one said fingers 41 responsive to force exerted upon the at least two of said fingers by the pine cones.

Re claim 2, Edwards teaches the body 10 and the peripheral rim 30 have circularly cylindrical configurations.

Re claim 6, Edwards teaches (figure 4) least one of the plurality of fingers 41 is angulated in a radially inward direction toward the tool body and at an angle of not more than about twenty degrees to a plane parallel to the peripheral rim.

Re claim 7, Edwards teaches (figure 3) each of the fingers defines a medial radially extending slot (not numbered) terminating in its radially outer portion in a bulbous enlargement (not numbered) to allow the radially inner portions of each finger 41 to move substantially independently of each other.

Re claim 8, Edwards teaches (column 4, lines 37,40; column 8, lines 3-7) the device made of plastics which would include polyethylene, etc.

Re claim 9, Edwards teaches (column 4, line 67 - column 5, line 4) first fastening means carried by the lower end portion of the body comprise external threads and the second fastening means carried by the inner surface of the rim of the entry structure comprises internal threads that matingly enmesh to releasably interconnect the body and the entry structure.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3,4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards (US 6,619,022) in view of Layton (US 2003/0079891).

Re claim 3, Edwards does not teach having at least one manipulating handle extending radially outwardly from structural interconnection with the body spacedly inwardly from the upper end portion thereof. Layton teaches having at least one manipulating handle 64 extending radially outwardly from structural interconnection with the body spacedly inwardly from the upper end portion thereof to allow easier gripping of the device. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Edwards by Layton to have at least one manipulating handle 64 extending radially outwardly from structural interconnection with the body spacedly inwardly from the upper end portion thereof to allow easier gripping of the device.

Re claim 4, Edwards as already modified by Layton teaches at least one manipulating handle 64 having a U-shaped body with similar opposed parallel legs extending perpendicularly from each end thereof, said legs carrying perpendicularly extending fastening brackets having means for fastening to the tool body.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards (US 6,619,022) in view of Crow (US 4,964,665).

Re claim 5, Edwards teaches (column 4, lines 15-16) the plurality of fingers of the entry structure may be in coplanar rows. Crow teaches there may be a single row of parallel resilient members 100. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Edwards by Crow the plurality of fingers of the entry structure may be coplanar in order to save money (less fingers).

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards (US 6,619,022).

Re claim 10, Edwards teaches (column 8, line 3-7) the device may be any desired dimension. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Edwards to be any desired dimension for financial or aesthetics considerations.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards (US 6,619,022) in view of Layton (US 2003/0079891) and further in view of Crow (US 4,964,665).

Re claim 11, Edwards teaches (column 8, line 3-7) the device may be any desired dimension. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Edwards to be any desired dimension for financial or aesthetics considerations.

Edwards does not teach having at least two manipulating handle having a U-shaped body with similar opposed parallel legs extending perpendicularly from each end thereof, said legs carrying perpendicularly extending fastening brackets having means for fastening to the tool body. Layton teaches at least two manipulating handle 64 having a U-shaped body with similar opposed parallel legs extending perpendicularly from each end thereof, said legs carrying perpendicularly extending fastening brackets having means for fastening to the tool body.

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Edwards teaches (column 4, lines 15-16) the plurality of fingers of the entry structure may be in coplanar rows. Crow teaches there may be a single row of parallel resilient members 100. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Edwards by Crow the plurality of fingers of the entry structure may be coplanar in order to save money (less fingers).

Conclusion

Applicant's arguments filed 9/22/05 have been fully considered but they are not persuasive.

Applicant argued that Edwards does not show the nuts. However figure 4 clearly shows the nuts.

Applicant argued that the grammar and punctuation as amended were wrong. However, as applicant notes the conventions of the patent office do not necessarily match certain grammar conventions outside of the patents field. For instance, claim 1 is a single sentence but over a page long. The colon is makes the claim clear since a colon is used to direct attention to related matter, such as a list, that follows. The semi-colon however is used between two independent ideas. The examiner is merely interested in making the claims clear by following standard patent office conventions and does not pretend to be an expert on grammar.

Applicant notes that the Edwards patent was known prior to filing but not brought to the attention of the examiner before the examiner found the reference himself. The

applicant is reminded of the obligation under 37 CFR 1.56 to disclose information material to patentability.

Regarding claims 1 (and 11), Edwards still meets the limitations as currently written. At least two fingers are coplanar and a pine cone can be pushed through the fingers.

Regarding claim 8, again Edwards still meets the limitations as currently written since the reference teaches plastics, which inherently teaches the various types of plastics.

Regarding claims 6 and 7, again Edwards still meets the limitations as currently written.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., stressed or unstressed states) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding claims 2,3,4,9, and 10, it is noted that the applicant states that the patentability of these claims depends upon claim 1.

Regarding claim 5, Crow is only used to modify Edwards and not vice versa. Both references are classified in the same class and subclass and deal with the fallen offspring of trees and therefore are of interest to applicant's invention.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Scott Lowe whose telephone number is (571) 272-6929. The examiner can normally be reached on 6:30am-4:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571) 272-6929. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

msl



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